



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/629,991

07/30/2003

Cheree L. B. Stevens

ADV12 P-305D

3726

277 7590 03/03/2008

PRICE HENEVELD COOPER DEWITT & LITTON, LLP  
695 KENMOOR, S.E.  
P O BOX 2567  
GRAND RAPIDS, MI 49501

EXAMINER

MAHAFKEY, KELLY J

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/03/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/629,991	<b>Applicant(s)</b> STEVENS ET AL.	
	<b>Examiner</b> /Kelly Mahafkey/	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 35-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 35-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Amendments made 12/4/07 have been entered.

Claims 1-23 and 35-49 remain pending.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-13 and 43-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites, "The composition of claim 7, where the film-forming agent comprises dextrin". Claim 7 refers to claim 1, which recites, "a film forming agent comprising corn dextrin." It is unclear if claim 11 is broadening the limitations of claim 1, and only requiring dextrin as opposed to corn dextrin as recited in claim 1, if claim 11 is reciting that a second dextrin component is included in the film forming agent, or if claim 11 has some other meaning.

Claim 43 recites, "The composition of claim 17, where the coating composition provides a moisture barrier where the coating composition is applied to the pastry product ". Claim 17 recites, "Wherein the coating composition provides at least a partial moisture barrier on the pastry product upon thermal processing." It is unclear if claim 43 is broadening the limitations of claim 17, not requiring thermal processing to form the moisture barrier, or if claim 43 has some other meaning.

#### ***Claim Rejections - 35 USC § 102***

The previous 102(e) rejection of claims 1-11, 14-20, 22, 23, 35, and 41 over Roskam (US 2003/0044488 A1) has been withdrawn in light of applicant's amendments made 12/4/07.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The previous 103(a) rejection of claims 12, 13, 21, 36, 37, and 38 over Roskam (US 2003/0044488 A1) in view of Lenchin et al. (US 4510166) has been withdrawn in light of applicant's 103(c) statement made of record 12/4/07.

The previous 103(a) rejection of claims 39, 40, and 42 over Roskam (US 2003/0044488 A1) in view of Fennema ed. (Food Chemistry 3<sup>rd</sup> Edition) has been withdrawn in light of applicant's 103(c) statement made of record 12/4/07.

Claims 17 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodge (US 3723132) and in view of Baur et al. (WO 94/21143).

Hodge teaches of a fried pastry product, which can be stored for extended periods of time, and which upon reheating will process texture and mouth feel of a freshly made product. Hodge teaches that the process of par frying, storing, and then heating after storage, prior to consumption via an oven or toaster, will increase the product's freshness of texture. Refer specifically to Column 1 lines 20-45 and Column 2 lines 11-31. Hodge is silent in teaching a coating composition as recited in claims 17 and 22.

Baur et al. (Baur) discloses of products at least partially coated with a food glaze (i.e. a coating), which can sustain heat processing (Abstract and Page 1, Background, and Example 1). Baur teaches that the glaze is for imparting a desirable crispiness and crunchiness (i.e. a fresh texture) on a raw, partially cooked or fully cooked products that are intended to be reheated or fully cooked for consumption (Background, Page 1 lines 35-37, and Page 2 lines 1-8). Baur teaches that food substrates are typically French fries, but that they include *any* food substrate, which can be coated and frozen, or coated, cooked, frozen or chilled, and subsequently reheated or fully cooked by frying, baking, or microwaving. Baur teaches that after the substrate is coated, it may be chilled, frozen or par- or fully- cooked. Refer specifically to Page 6 lines 7-21. Specifically regarding a partial moisture barrier, the coating composition as taught by Baur is taught for imparting a desirable crispiness and crunchiness (i.e. preventing a

sogginess) on a raw, partially cooked or fully cooked products that are intended to be reheated or fully cooked for consumption (Background, Page 1 lines 35-37, and Page 2 lines 1-8). Therefore, Baur teaches of the coating as maintaining *at least a partial* moisture barrier on the substrate. Baur discloses that the glaze contains about 5-50% wheat flour (wheat flour is composed partially of wheat starch- Page 2 lines 27-35), 5-50% modified corn starch (Page 4, Table I), about 2-20% corn dextrin (i.e. a film forming agent- Page 5 line, about 0.1-5% xanthan gum (i.e. a stabilizer- Page 5 lines 27-35), about 0.1-2.5% sodium bicarbonate (i.e. a leavening system- Page 8 lines 1-22), about 0.1-3.5% sodium acid pyrophosphate, (i.e. a leavening system- Page 8 lines 1-22), optional flavorings (i.e. including 0% sweetener - Page 9 lines 11-13), and water (Example 1).

It would have been obvious to one skilled in the art at the time the invention was made to have had about 50% water mixed with a composition consisting of 5-50% wheat flour, 5-50% modified corn starch, about 2-20% corn dextrin, about 0.1-5% xanthan gum, about 0.1-2.5% sodium bicarbonate, about 0.1-3.5% sodium acid pyrophosphate, and optional flavorings to form a preserving coating to be applied to a pastry in view of Baur on the texture preserved fried pastry product as disclosed by Hodge. One would have been motivated to do so in order to gain the benefits of the coating as disclosed by Baur, such a coating composition which imparts a desirable crispiness and crunchiness on a raw, partially cooked (par fried) or fully cooked products that are intended to be reheated or fully cooked for consumption (i.e. such as in an oven or a toaster).

Claims 1-9, 11, 14-19, 22, 23, and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer (US 2341523) in view of Hodge (US 3723132).

Bauer discloses of a clear film (Column 1 lines 1-8) for coating all types of food to inhibit growth of bacteria and molds (Column 5 lines 15-52). Bauer teaches that the clear film contains about 30-45% starch and 15-45% dextrin (Examples 1-4). Bauer teaches that the starch is modified wheat starch, by, for example, oxidation. Bauer teaches that the dextrin is corn dextrin. Refer specifically to Column 2 lines 36-50.

Art Unit: 1794

Bauer teaches that the coating composition is applied as a slurry with about 24-32% slurry solids (Examples 1-4). Bauer teaches that the coating composition is allowed to cool from 175F and then coated onto a substrate (Example 1). Note: Claim 15 is an optional limitation depending from claim 7. Claim 7 recites that the composition includes about 0% to about 30% sweetener. As Bauer teaches of 0% sweetener, the limitation of claim 15 defining the sweetener composition is optional and thus included in the rejection. Similarly, claim 23 is included in the rejection.

Bauer, however is silent to the food product as a low moisture toaster pastry including wheat flour as recited in claims 1 and 3, to the coating composition as providing a partial moisture barrier, such as upon thermal processing, as recited in claims 1, 4, 17, and 43, to the temperature at which the coating composition is applied to the food product as recited in claim 4, and to the slurry pick up of 5-30% as recited in claim 16.

Hodge teaches of a low moisture wheat based toaster pastry product with improved shelf stability. Hodge teaches that it was known in the art for such pastry composition to have problems with shelf stability and storage. Refer specifically to Column 1 lines 20-45 and Column 2 lines 11-31.

Regarding the food product as a low moisture toaster pastry including wheat flour, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the coating as taught by Bauer on any type of food product which was known to have shelf stability problems as the coating taught by Bauer improves shelf stability. Hodge recognizes that pastry composition have problems with shelf stability and storage. To coat a low moisture wheat flour based toaster pastry with the coating composition as taught by Bauer would have been obvious in order to further extend the shelf life of the pastry product.

Regarding the coating composition as providing a partial moisture barrier, such as upon thermal processing, since the coating composition as taught by Bauer has substantially the same composition as the coating composition as instantly claimed, one of ordinary skill in the art at the time the invention was made would expect the composition as taught by Bauer to have substantially the same properties as the

Art Unit: 1794

composition as instantly claimed, thus one of ordinary skill in the art at the time the invention was made would expect the composition as taught by Bauer to provide a partial moisture barrier when applied to a substrate and when thermally processed on a substrate, absent any clear and convincing arguments and/or evidence to the contrary.

Regarding the temperature at which the coating composition is applied to the food product, Bauer does not teach of actively cooling the composition or heating it for application, thus one of ordinary skill in the art at the time the invention was made would expect that Bauer inherently teaches of applying the coating composition at room temperature, i.e. about 70F, absent any clear and convincing arguments and/or evidence to the contrary.

Regarding the slurry pick up of 5-30%, since the coating composition as taught by Bauer has substantially the same composition as the coating composition as instantly claimed, one of ordinary skill in the art at the time the invention was made would expect the composition as taught by Bauer to have substantially the same properties as the composition as instantly claimed, thus one of ordinary skill in the art at the time the invention was made would expect the composition as taught by Bauer to have a slurry pick up of about 5-30%, absent any clear and convincing arguments and/or evidence to the contrary.

Claims 10, 20, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer (US 2341523) in view of Hodge (US 3723132), further in view of Gonzalez-Sanz (US 5439697).

Bauer in view of Hodge disclose of a coated pastry composition as discussed above. Bauer teaches that the coating composition contains modified starches, including oxidized wheat starch. Bauer, however, is silent to the starch as an oxidized substituted modified wheat starch as recited in claims 10, 20, and 46.

Gonzalez-Sanz (Sanz) discloses of a conventional coating composition for pastries, which includes starch, hydrocolloids, sweeteners, emulsifiers, and water, and the conventional properties of each component (Abstract and Column 2 lines 61-65). Sanz teaches that chemically and physically modified starches build viscosity and bind

moisture. Sanz teaches that different modifications provide different viscosity and moisture binding results. Refer specifically to Column 1 lines 10-29, Column 4 lines 36-68, and Column 5, lines 1-13.

Regarding a specific type of modified oxidized wheat starch (i.e. modified, substitute modified, ect), it would have been obvious to one skilled in the art to use a type of oxidized modified wheat starch depending on the specific amount of viscosity and moisture in the final product. To do so would be within the ordinary ingenuity of one of ordinary skill in the art, as taught by Sanz, and would not impart a patentable distinction to the claims absent any clear and convincing arguments and/or evidence to the contrary.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer (US 2341523) in view of Hodge (US 3723132), further in view of Lenchin et al. (US 4510166).

Bauer in view of Hodge disclose of a coated pastry composition as discussed above. Bauer teaches that the coating composition contains corn dextrin. Bauer, however, is silent to the solubility of the corn dextrin as recited in claims 12 and 13.

Lenchin et al. (Lenchin) discloses of converted starches, which with water form a creamy and smooth consistency, and are suitable in coatings or icings (Abstract and Column 8 lines 27-35). Lenchin teaches that different types of dextrin at different solubility levels have gel strengths and gel textures (Column 3 lines 37-66 and Table II).

It would have been obvious to one skilled in the art at the time the invention was made to include dextrin at a specific solubility level depending on the desired gel strength and texture as taught by Lenchin. To do so would be within the ordinary ingenuity of one of ordinary skill in the art, as taught by Lenchin, and would not impart a patentable distinction to the claims absent any clear and convincing arguments and/or evidence to the contrary.



Claims 21 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer (US 2341523) in view of the combination of Hodge (US 3723132) and Gonzalez-Sanz (US 5439697), further in view of Lenchin et al. (US 4510166).

Bauer in view of Hodge disclose of a coated pastry composition as discussed above. Bauer teaches that the coating composition contains corn dextrin. Bauer, however, is silent to the solubility of the corn dextrin as recited in claims 21 and 47.

Lenchin et al. (Lenchin) discloses of converted starches, which with water form a creamy and smooth consistency, and are suitable in coatings or icings (Abstract and Column 8 lines 27-35). Lenchin teaches that different types of dextrin at different solubility levels have gel strengths and gel textures (Column 3 lines 37-66 and Table II).

It would have been obvious to one skilled in the art at the time the invention was made to include dextrin at a specific solubility level depending on the desired gel strength and texture as taught by Lenchin. To do so would be within the ordinary ingenuity of one of ordinary skill in the art, as taught by Lenchin, and would not impart a patentable distinction to the claims absent any clear and convincing arguments and/or evidence to the contrary.

Claims 35-42, 48, 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer (US 2341523) in view of Hodge (US 3723132), further in view of the combination of Baur et al. (WO 94/21143) and Gonzalez-Sanz (US 5439697).

Bauer in view of Hodge disclose of a coated pastry composition as discussed above. Bauer, however, is silent to the coating composition as containing about 0.5-2.5%, preferably about 1.8%, sodium acid pyrophosphate, about 0.5-2.5%, preferably about 1.2% sodium bicarbonate, about 10-20%, preferably about 14% granulated sugar, and about 0-3%, preferably 0.15% stabilizer as recited in claims 25 and 38, to the stabilizer as xanthan gum as recited in claims 35, 37, and 38, to the oxidized wheat starch as substituted to a level of about 0.1% as recited in claims 39 and 40, and to the viscosity of the coating slurry as recited in claims 41, 42, and 49.

Baur et al. (Baur) discloses of products at least partially coated with a food glaze (i.e. a coating), which can sustain heat processing (Abstract and Page 1, Background,

Art Unit: 1794

and Example 1). Baur teaches that food substrates include any food substrate, which can be coated and frozen, or coated, cooked, frozen or chilled, and subsequently reheated or fully cooked by frying, baking, or microwaving. Refer specifically to Page 6 lines 7-21. Baur discloses that the glaze contains about wheat starch, about 2-20% corn dextrin (Page 5 lines 1-20), about 0.1-5% xanthan gum (i.e. a stabilizer- Page 5 lines 27-35), about 0.1-2.5% sodium bicarbonate (i.e. a leavening system- Page 8 lines 1-22), about 0.1-3.5% sodium acid pyrophosphate, (i.e. a leavening system- Page 8 lines 1-22), optional flavorings (Page 9 lines 11-13), and water (Example 1). Baur teaches that the leavening agents improve the appearance, texture, and keeping qualities of the final coated product (Page 5 lines 22-28 and Page 8 lines 20-24). Baur teaches that preferably 0.1-0.25% xanthan gum is included in the coating in order to better hydrate the starch, leading to improve product qualities as well as enrobing stability (Page 5 lines 27-35).

Gonzalez-Sanz (Sanz) discloses of a conventional coating composition for pastries, which includes starch, hydrocolloids, sweeteners, emulsifiers, and water, and the conventional properties of each component (Abstract and Column 2 lines 61-65). Sanz teaches that chemically and physically modified starches build viscosity and bind moisture. Refer specifically to Column 1 lines 10-29, Column 4 lines 36-68, and Column 5, lines 1-13. Sanz discloses that one role of sweeteners is to provide taste or flavoring (Column 3 lines 19-21). Sanz discloses that sweeteners, including granulated or solid forms function primarily as bulking agents, providing flavoring, moistness, and viscosity. In addition, sweeteners function to control water activity and density of the coating composition. Refer specifically to Column 3 lines 28-38.

Regarding the coating composition as containing about 0.5-2.5%, preferably about 1.8%, sodium acid pyrophosphate and about 0.5-2.5%, preferably about 1.2% sodium bicarbonate, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include about 0.1-2.5% sodium bicarbonate and about 0.1-3.5% sodium acid pyrophosphate in the coating composition as taught by Baur. One would have been motivated to do so in order to improve the appearance, texture,

Art Unit: 1794

and keeping qualities of the final coated product as taught by Baur (Page 5 lines 22-28 and Page 8 lines 20-24).

Regarding the coating composition as containing about 10-20%, preferably about 14% granulated sugar, it would have been obvious to one skilled in the art at the time the invention was made to have modified the coating composition as disclosed by modified Bauer to include a sweetener in view of Sanz. One would have been motivated to do so in order to gain the benefits of a sweetener, such as a flavoring agent, which provides moistness and viscosity. It would have been further obvious to one skilled in the art at the time the invention was made to include an amount and type of sweetener, such as granulated sugar, depending on the desired amount of flavoring, moistness, and viscosity desired as taught by Sanz.

Regarding the coating composition as containing about 0-3%, preferably 0.15% xanthan gum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include about 0.1-0.25% xanthan gum in the coating composition in order to better hydrate the starch, leading to improve product qualities as well as enrobing stability as taught by Baur.

Regarding the oxidized wheat starch as substituted to a level of about 0.1%, it would have been obvious to one skilled in the art to use a type of oxidized modified wheat starch, with a degree of oxidation, depending on the specific amount of viscosity and moisture in the final product. To do so would be within the ordinary ingenuity of one of ordinary skill in the art, as taught by Sanz, and would not impart a patentable distinction to the claims absent any clear and convincing arguments and/or evidence to the contrary.

Regarding the viscosity of the coating slurry, since the coating composition as taught by Bauer has substantially the same composition as the coating composition as instantly claimed, one of ordinary skill in the art at the time the invention was made would expect the composition as taught by Bauer to have substantially the same properties as the composition as instantly claimed, thus one of ordinary skill in the art at the time the invention was made would expect the composition as taught by Bauer to

have a viscosity of about 8-40 seconds when measured by the Stein viscosity method, absent any clear and convincing arguments and/or evidence to the contrary.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-23 and 35-49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5-9, 11, 14, 15, and 17-19 of copending Application No. 10682673 (673). The references and rejection are incorporated herein and as cited in the office action mailed January 26, 2006.

Claims 1-23 and 35-49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 6-8, 12-17, 23-28, and 47-53 of copending Application No. 10682672 (672). The references and rejection are incorporated herein and as cited in the office action mailed January 26, 2006.

### ***Response to Arguments***

Applicant's arguments with respect to the 102(e) rejections have been considered but are moot in view of the new ground(s) of rejection, as necessitated by amendments made 12/4/07.

Applicant's arguments, filed 12/4/07, with respect to 103(c) have been fully considered and are persuasive. The 103(a) rejections of claims 12, 13, 21, 36-40, and 42 have been withdrawn.

Applicant's arguments with respect to the provisional nonstatutory type double patenting rejection over US patent application 10/170964, now US Patent 7294355 has been withdrawn in light of applicants amendments made 12/4/07 requiring corn dextrin in the coating composition.

Applicant's arguments regarding the provisional nonstatutory type double patenting rejection over US patent applications 10/682672 and 10/682673 have been fully considered but they are not persuasive. Applicant argues (pages 9-10 of the remarks submitted 12/4/07) that, when "the provisional nonstatutory obvious-type double patenting rejection is the only rejection remaining... the examiner should withdrawn the rejection". Applicant's argument is not convincing as the provisional nonstatutory obvious-type double patenting rejection is not the only remaining rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

Art Unit: 1794

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/  
Primary Examiner  
Group 1700

/Kelly Mahafkey/  
Examiner  
Art Unit 1794